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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 PEDRO LUIS RODRIGUEZ,
12 Inmate Booking No. 14745493,

13 Plaintiff,

14 vs.
15

16 WOOD ROBINSON;
17 CONTRACTORS STATE LICENSING
18 BOARD,

19 Defendants.

Civil No. 14cv2770 LAB (WVG)

ORDER:

**(1) GRANTING MOTION TO
PROCEED *IN FORMA PAUPERIS*
[Doc. No. 3]**

AND

**(2) DISMISSING COMPLAINT
FOR FAILING TO STATE A
CLAIM PURSUANT TO
28 U.S.C. § 1915(e)(2)(B)(ii)
AND § 1915A(b)(1)**

20 Pedro Rodriguez (“Plaintiff”), currently housed at the Vista Detention Facility
21 located in Vista, California, and proceeding pro se, has filed a civil rights complaint
22 (“Compl.”) pursuant to 42 U.S.C. § 1983 (Doc. No. 1).

23 Plaintiff has not prepaid the civil filing fee; instead he has filed a Motion to
24 Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) (Doc. No. 3).

25 **I.**

26 **PLAINTIFF’S MOTION TO PROCEED IFP**

27 All parties instituting any civil action, suit or proceeding in a district court of the
28 United States, except an application for writ of habeas corpus, must pay a filing fee. *See*

1 28 U.S.C. § 1914(a).¹ An action may proceed despite the plaintiff's failure to prepay the
 2 entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See*
 3 *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if the plaintiff is a
 4 prisoner and is granted leave to proceed IFP, he nevertheless remains obligated to pay
 5 the entire fee in installments, regardless of whether his action is ultimately dismissed. *See*
 6 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

7 Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act
 8 ("PLRA"), a prisoner seeking leave to proceed IFP must also submit a "certified copy of
 9 the trust fund account statement (or institutional equivalent) for . . . the six-month period
 10 immediately preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2); *Andrews*
 11 *v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified trust account statement,
 12 the Court assesses an initial payment of 20% of (a) the average monthly deposits in the
 13 account for the past six months, or (b) the average monthly balance in the account for the
 14 past six months, whichever is greater, unless the prisoner has no assets. *See* 28 U.S.C.
 15 § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody of the prisoner
 16 then collects subsequent payments, assessed at 20% of the preceding month's income,
 17 in any month in which the prisoner's account exceeds \$10, and forwards them to the
 18 Court until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2).

19 In support of his IFP application, Plaintiff has submitted a certified copy of his
 20 trust account statement required by 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2.
 21 *Andrews*, 398 F.3d at 1119. The Court has reviewed Plaintiff's trust account statements,
 22 as well as the attached prison certificate issued by a trust account official where he is
 23 currently incarcerated verifying his account history and available balances. Plaintiff's
 24 statements show an average monthly balance of \$47.29 and average monthly deposits of
 25 \$112.40 at the time of filing. Based on this financial information, the Court GRANTS

26
 27 ¹ In addition to the \$350 statutory fee, all parties filing civil actions on or after
 28 May 1, 2013, must pay an additional administrative fee of \$50. *See* 28 U.S.C. § 1914(a),
 (b); Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule (eff. May
 1, 2013). However, the additional \$50 administrative fee is waived if the plaintiff is
 granted leave to proceed IFP. *Id.*

1 Plaintiff's Motion to Proceed IFP (Doc. No. 3) and assesses an initial partial filing fee
2 of \$22.48 pursuant to 28 U.S.C. § 1915(b)(1).

3 However, the Watch Commander, or his designee, shall collect this initial fee only
4 if sufficient funds in Plaintiff's account are available at the time this Order is executed
5 pursuant to the directions set forth below. *See* 28 U.S.C. § 1915(b)(4) (providing that
6 "[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a
7 civil action or criminal judgment for the reason that the prisoner has no assets and no
8 means by which to pay the initial partial filing fee."); *Taylor*, 281 F.3d at 850 (finding
9 that 28 U.S.C. § 1915(b)(4) acts as a "safety-valve" preventing dismissal of a prisoner's
10 IFP case based solely on a "failure to pay . . . due to the lack of funds available to him
11 when payment is ordered."). The remaining balance of the \$350 total fee owed in this
12 case shall be collected and forwarded to the Clerk of the Court pursuant to the
13 installment payment provisions set forth in 28 U.S.C. § 1915(b)(1).

14 II.

15 INITIAL SCREENING PER 28 U.S.C. §§ 1915(e)(2)(B) AND 1915A(b)

16 A. Standard of Review

17 Notwithstanding Plaintiff's IFP status or the payment of any partial filing fees, the
18 PLRA also obligates the Court to review complaints filed by all persons proceeding IFP
19 and by those, like Plaintiff, who are "incarcerated or detained in any facility [and]
20 accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or the
21 terms or conditions of parole, probation, pretrial release, or diversionary program," "as
22 soon as practicable after docketing." *See* 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under
23 these statutes, the Court must sua sponte dismiss complaints, or any portions thereof,
24 which are frivolous, malicious, fail to state a claim, or which seek damages from
25 defendants who are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b); *Lopez v.*
26 *Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Rhodes v.*
27 *Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b)).

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1 All complaints must contain “a short and plain statement of the claim showing that
 2 the pleader is entitled to relief.” FED.R.CIV.P. 8(a)(2). Detailed factual allegations are
 3 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
 4 mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
 5 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Determining
 6 whether a complaint states a plausible claim for relief [is] . . . a context-specific task that
 7 requires the reviewing court to draw on its judicial experience and common sense.” *Id.*
 8 The “mere possibility of misconduct” falls short of meeting this plausibility standard.
 9 *Id.*; see also *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

10 “When there are well-pleaded factual allegations, a court should assume their
 11 veracity, and then determine whether they plausibly give rise to an entitlement to relief.”
 12 *Iqbal*, 556 U.S. at 679; see also *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)
 13 (“[W]hen determining whether a complaint states a claim, a court must accept as true all
 14 allegations of material fact and must construe those facts in the light most favorable to
 15 the plaintiff.”); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that
 16 § 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”).

17 However, while the court “ha[s] an obligation where the petitioner is pro se,
 18 particularly in civil rights cases, to construe the pleadings liberally and to afford the
 19 petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.
 20 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not
 21 “supply essential elements of claims that were not initially pled.” *Ivey v. Board of*
 22 *Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

23 **B. Plaintiff’s Complaint**

24 Plaintiff alleges that his constitutional rights were violated when the Attorney
 25 General’s Office, on behalf of the State Contractor’s Licensing Board, moved to revoke
 26 his contractor’s licence while he was out on bail.

27 “Section 1983 creates a private right of action against individuals who, acting
 28 under color of state law, violate federal constitutional or statutory rights.” *Devereaux*

1 *v. Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001). Section 1983 “is not itself a source of
 2 substantive rights, but merely provides a method for vindicating federal rights elsewhere
 3 conferred.” *Graham v. Connor*, 490 U.S. 386, 393-94 (1989) (internal quotation marks
 4 and citations omitted). “To establish § 1983 liability, a plaintiff must show both (1)
 5 deprivation of a right secured by the Constitution and laws of the United States, and (2)
 6 that the deprivation was committed by a person acting under color of state law.” *Tsao*
 7 *v. Desert Palace, Inc.*, 698 F.3d 1128, 1138 (9th Cir. 2012).

8 Here, while it may be that the State Contractor’s Licensing Board was acting
 9 “under color of state law,” Plaintiff has alleged no facts to show that he was deprived of
 10 his constitutional rights. Plaintiff claims that the Defendants sought “to manipulate the
 11 Superior Courts to adding undue unnecessary restrictions to the Plaintiff’s probation” but
 12 he then attaches a transcript of the hearing in which a San Diego Superior Court Judge
 13 denied this request. “The Fourteenth Amendment’s Due Process Clause protects persons
 14 against deprivations of life, liberty, or property; and those who seek to invoke its
 15 procedural protection must establish that one of these interests is at stake.” *Wilkinson v.*
 16 *Austin*, 545 U.S. 209, 221 (2005). Plaintiff has not been deprived of life, liberty or
 17 property. Plaintiff claims that he does not have a contractor’s license so there can be no
 18 deprivation. (See Compl. at 1.) Accordingly, the Court DISMISSES Plaintiff’s
 19 Complaint for failing to state a claim upon which relief may be granted.

20 III.

21 CONCLUSION AND ORDER

22 Good cause appearing, **IT IS HEREBY ORDERED:**

23 1. Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) (Doc. No.
 24 3) is **GRANTED**.

25 2. The Watch Commander, or his designee, shall collect the \$22.48 initial
 26 filing fee assessed by this Order from Plaintiff’s prison trust account, and shall forward
 27 the remaining \$327.52 balance of the full fee owed by collecting monthly payments from
 28 Plaintiff’s account in an amount equal to twenty percent (20%) of the preceding month’s

1 income and shall forward payments to the Clerk of the Court each time the amount in the
2 account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). ALL PAYMENTS
3 SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED
4 TO THIS ACTION.

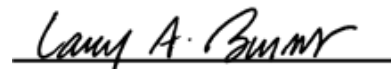
5 3. The Clerk of the Court is directed to serve a copy of this Order on Watch
6 Commander, Vista Detention Facility, 325 S. Melrose Drive, Vista, California 92081.

7 **IT IS FURTHER ORDERED** that:

8 4. Plaintiff's Complaint is **DISMISSED** for failing to state a claim upon which
9 relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1).
10 However, Plaintiff is **GRANTED** sixty (60) days leave from the date of this Order in
11 which to file an Amended Complaint which cures all the deficiencies of pleading noted
12 above. Plaintiff's Amended Complaint must be complete in itself without reference to
13 his original pleading. *See* S.D. CAL. CIVLR. 15.1. Defendants not named and all claims
14 not re-alleged in the Amended Complaint will be considered waived. *See King v. Atiyeh*,
15 814 F.2d 565, 567 (9th Cir. 1987).

16 5. The Clerk of Court is directed to mail a copy of a form § 1983 complaint.

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18 DATED: January 16, 2015

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20 **HONORABLE LARRY ALAN BURNS**
21 United States District Judge
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